



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,527	03/18/2005	Cornelis Martinus Lok	JMYS-123US	8287
23122	7590	03/25/2010		
RATNERPRESTIA P.O. BOX 980 VALLEY FORGE, PA 19482			EXAMINER NGUYEN, CAM N	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 03/25/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,527

Applicant(s)

LOK, CORNELIS MARTINUS

Examiner

Cam N. Nguyen

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on an amendment/response filed on 01/20/10.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9 and 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed on 01/20/10 has been made of record and entered. Claims 1 & 9 have been amended. Claim 8 has been canceled. Claims 16-21 have been added.

Claims 1-7 & 9-21 are currently pending in this application.

Status of Withdrawn Claim(s)

2. This application contains claims 10-14 which drawn to an invention nonelected with traverse in the reply filed on 01/19/09. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A. **Claims 1-7, 9, & 15-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hu et al., hereinafter referred to as “*Hu ‘844*”, (US Pat. 7,452,844 B2).

Hu '844 was filed on May 8, 2001 and as such qualifies as prior art against the claimed invention under 102(e).

Hu '844 teaches a method for manufacturing a cobalt catalyst (see col. 2, line 36). In a preferred embodiment cobalt ammine carbonate is maintained at a temperature of from 82-85°C until decomposition is complete (see Example 1 spanning col. 10-11). The metal or promoter of the catalyst is usually dispersed on or compounded a carrier or support (see col. 4, lines 60-61). One of the disclosed carrier/supports is titania (see col. 4, line 66). The catalysts are prepared at a pH greater than about 7.0 (see abstract). The preferred method is to directly treat the catalyst support with the cobalt precursor then dry and calcine the coated support (see col. 7, lines 49-64). Note that calcining would effect decomposition of the cobalt precursor and its precipitation as an insoluble cobalt compound onto a support. See also entire reference for further details regarding process conditions.

While **Hu '844** does not specifically disclose using a pH in the range of 7.5 to 12, his suggestions to use pH greater than 7.0 and thus the claimed range lies inside the range disclosed by the prior art and a *prima facie* case of obviousness exists. It has been held that [In the case where the claimed ranges “overlap or lie inside ranges disclosed by the prior art” a *prima facie* case of obviousness exists. In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed.Cir. 1990). See also MPEP 2144.05 [R-5] Obviousness of Ranges.

It is considered calcining and reducing the catalyst at the claimed temperature ranges are obvious because it is conventional and known in the art to do so in the catalyst art.

With respect to the claimed cobalt surface area, it would be obvious and expected that the catalyst disclosed and obtained by the process of **Hu '844** would have the same cobalt surface area in view of the same process disclosed and being claimed.

B. **Claims 1-7, 9, & 15-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hu et al., hereinafter referred to as "**Hu '844**", (US Pat. 7,452,844 B2) *in view of* Lok et al., hereinafter referred to as "**Lok '190**", (US Pat. 6,927,190 B2) OR Lok et al., hereinafter referred to as "**Lok '436**", (US Pat. 6,534,436 B2).

Alternatively, **Hu '844** discloses a method for manufacturing a cobalt catalyst as described in the precedent paragraph above. **Lok '190** and **Lok '436** teach similar processes with cobalt ammine complexes and disclose pH ranges of 7-12 (see: col.6, lines 5-23 and col. 8, Example 1 and Table 1) and 7.5-12 (see col.2, lines 56-67 and claim 8), respectively. Therefore, it would have been obvious to have modified the range of "above 7.0" pH as taught by **Hu '844** by the ranges in the **Lok '190** and **Lok '436** references because the reasonable expectation of producing useful catalysts, since these are very similar processes.

With respect to the claimed cobalt surface area, it would be obvious and expected that the catalyst disclosed and obtained by the process of **Hu '844** would have the same cobalt surface area in view of the same process disclosed and being claimed.

Response to Applicants' Arguments

4. The remarks filed on 01/20/10 have been fully considered, but not deemed persuasive because of the following reasons.

First, the 1.132 Declaration submitted on 01/20/10 has been reviewed and considered, but it does not appear to overcome the rejection made because there is not sufficient evidence or comparative data provided. The declaration only provides the data for Catalyst A and Catalyst B and both of which are for the present invention. There is no data provided for Hu '844 catalyst. Also, the declaration addresses the difference in the crystallite size between the catalyst obtained by the claimed method; however, such crystallite size is not being claimed in the instant claims. Thus, the declaration as submitted does not appear to overcome the rejection made.

Applicants' arguments regarding the Hu '844 reference have been noted, Examiner maintains the position that the claimed "pH range of 7.5 to 12" and "pH range of 9 to 12" are obvious and unpatentable for the same reasons as set forth in the rejections above.

Second, Lok '190 and Lok '436 are still applicable prior arts under a 103 because Lok '190 has a earliest effective filing date of April 23, 2001 and Lok '436 has an earliest effective filing date of February 20, 2010, which are prior to the earliest effective filing date of the instant application. Both of Lok '190 and Lok '436 have three inventors, the instant application however has only 1 inventor to Lok, thus Lok '190 and Lok '436 references are considered patented or owned by another. Section 102(e) states that:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

6. Claims 1-7 & 9-21 are pending. Claims 1-7, 9, & 15-21 are rejected. Claims 10-14 remain withdrawn due to nonelected (distinct) invention(s). No claims are allowed.

Contacts

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner CAM N. NGUYEN, whose telephone number is 571-272-1357. The examiner can normally be reached on M-F, 9:00 AM - 6:30 PM, at alternative work site.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cam N. Nguyen/

Primary Examiner

Art Unit: 1793

/C. N. N./

March 23, 2010